REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LETTERS' PATENT APPEAL NO. 612 OF 2006**

% **Date of Decision** :3rd September, 2007.

ESCORTS HEART INSTITUTE &
RESEARCH CENTRE LTD. .... Appellant.
Through Mr. P.V. Kapur, Sr. Advocate with Mr. Sanjeev Puri & Mr. Rohit Puri, Advocates.

VERSUS

D.D.A & ANR .... Respondents.
Through Mr. Ajay Verma, Advocate.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ? Yes.

3. Whether the judgment should be reported in the Digest ? Yes.

SANJIV KHANNA, J:

1. Escorts Heart and Research Centre, a society registered under the Societies Registration Act, 1860, was allotted 6.9 acres of

land by the Delhi Development Authority, the respondent No. 1. On 31st October, 2003, a show cause notice was issued to the appellant by the respondent No. 1 as to why the allotment should not be cancelled for violation of the condition for providing at least 25% of the total beds for free treatment to the patients belonging to the weaker sections of the society. The respondent No. 1 also issued another show cause notice dated 21st April, 2004 for cancellation of allotment/lease deed in view of the merger of the aforesaid society into another society, which as per the respondent No. 1 was in violation of the terms and conditions of the lease/allotment, as it constituted transfer.

2. By an order dated 10th June, 2005, the respondent No. 1 determined the allotment/leasehold rights granted to the appellant-society. Accordingly direction was given to handover the said land and building constructed thereon to the Delhi Development Authority.

3. The appellant has filed a civil suit being CS (OS) No. 1440/2005 before the High Court challenging the order dated 6th

October, 2005. The said suit, it is stated pertains to lands covered by allotment letters in respect of which no perpetual lease deeds have been executed. The appellant has stated that an application under Section 9 of the Arbitration and Conciliation Act, 1996 being OMP No. 364/2005 has been instituted. In the civil suit and the OMP restraint orders have been passed against the respondent No. 1 directing them not to recover the physical possession of the property.

4. The respondent No. 1 has invoked jurisdiction of the Estate Officer under Public Premises (Eviction of Unauthorised Occupants) Act, 1971. On 9th November, 2005, the Estate Officer issued show cause notice as to why order of eviction should not be passed in respect of 6.9 acres of land. Proceedings are pending before the Estate Officer. In the present appeal, we are not concerned with the proceedings pending in the suit and OMP as well as question whether the said proceedings are maintainable. We are also not concerned with the scope and authority of the Estate Officer to go into the question whether the order dated 6th October, 2005

terminating the lease/grant for violation of the terms of the land/grant is valid. The only contention with regard to question raised before us during the course of arguments was that in view of the decision of the Supreme Court in ***Express Newspapers Private Limited versus Union of India, AIR 1986 SC 872*** proceedings before the Estate Officer are not maintainable; without jurisdiction and only civil suit is maintainable. The said contention did not find favour with the learned Single Judge, who referred to the five Judges Bench decision of the Supreme Court in ***Ashoka Marketing Limited and Another versus Punjab National Bank and Others, AIR 1991 SC 855.*** The learned Single Judge also relied upon decision of Division Bench of this Court in Letters Patent Appeal No. 976/2004, titled ***Delhi Development Authority versus Ambitious Gold Nib Manufacturing (P) Limited***.

5. Learned counsel for the appellant submitted that decision in the case of ***Ashoka Marketing Limited (supra)*** is distinguishable as in the said case constructed property had been given on lease/licence,

whereas in the present case grant/leasehold rights in respect of land has been given by the respondent No. 1 and buildings worth crores of rupees have been constructed by the predecessor in interest of the appellant/the appellant.

6. The limited and the short question raised before us is whether eviction proceedings can be initiated by the respondent No. 1 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 or in view of the decision in the ***Express Newspapers case (supra),*** the respondent No. 1 must file a civil suit for recovery of possession. In ***Express Newspapers case (supra)***, the Supreme Court had observed as under:-

> "**87.** Nothing stated here should be construed to mean that the Government has not the power to take recourse to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 where admittedly there is unauthorised construction by a lessee or by any other person on Government land which is public premises within the meaning of Section 2 (e) and such person is in unauthorised occupation thereof.
>
> *The constitutional position of the Lieutenant-Governor : whether the Lieutenant Governor*

is the successor of the Chief Commissioner of Delhi.

88. One of the most crucial issues on which long and erudite arguments were advanced by learned counsel for the parties, turned on the question as to whether the Lt. Governor was a successor of the Chief Commissioner of Delhi. Learned counsel appearing for the petitioners contended that the Lt. Governor cannot usurp the functions of the lessor i.e. the Union of India or the Chief Commissioner of Delhi in relation to the lease in question. It is urged that the Union Territory of Delhi which first became a Part 'C' State under the Constitution, was an entirely new constitutional entity and therefore the office of the Chief Commissioner of Delhi ceased to exist. It is further urged that the Lt. Governor appointed by the President under Article 239(1) of the Constitution is an Administrator and he discharges such functions as are entrusted to him by the President of India and in the absence of a notification under Article 239(1), the Lt. Governor cannot usurp the functions of the Union of India in relation to the properties of the Union. It is pointed out that there was no notification issued by the President of India in terms of Article 239(1) of the Constitution empowering the Lt. Governor to administer the properties of the Union in the Union Territory of Delhi."

7. Subsequently a five Judges Bench of the Supreme Court in ***Ashoka Marketing Limited (supra)*** examined the provisions of

Public Premises Act, 1971 and held that the expression unauthorized occupation as used in the said Act includes a person who had occupied any public premises without lawful authority as well as those whose occupation was permissive at the inception but subsequently ceased to be so. The second part of the definition clause is inclusive in nature and also covers continuance of occupation by any person of the public premises after the grant or transfer made by any mode has expired or determined for any reasoning whatsoever. In paragraph 30, accordingly it was observed as under:-

> ".....The words "whether by way of grant or any other mode of transfer" in this part of the definition are wide in amplitude and would cover a lease because lease is a mode of transfer under the Transfer of Property Act. The definition of unauthorised occupation contained in Section 2 (g) of the Public Premises Act would, therefore, cover a case where a person has entered into occupation of the public premises legally as a tenant under a lease but whose tenancy has expired or has been determined in accordance with law."

8. Reference of the Supreme Court in ***Ashoka Marketing*** case (supra) was drawn to ***Express Newspapers*** case (supra) and it was clarified as under:-

> "**32.** Shri Ganguli has placed reliance on the decision of A.P. Sen, J. in Express Newspapers Pvt. Ltd. v. Union of India and has submitted that in that case the learned Judge has held that cases involving relationship between the lessor and lessee fall outside the purview of the Public Premises Act. We have carefully perused the said decision and we are unable to agree with Shri Ganguli. In that case A.P. Sen, J. has observed that the new building had been constructed by the Express Newspapers Pvt. Ltd. after the grant of permission by the lessor, and, therefore, the Express Newspapers Pvt. Ltd. was not in unauthorised occupation of the same within the meaning of Section 2(g) of the Public Premises Act. It was also held by the learned Judge that the Express Building constructed by the Express Newspapers Ltd. with the sanction of lessor on plots Nos. 9 and 10 demised on perpetual lease can, by no process of reasoning, be regarded as public premises belonging to the Central Government under Section 2(e) of the Public Premises Act, and therefore, there was no question of the lessor applying for eviction of the Express Newspapers Pvt. Ltd. under the provisions of the Public Premises Act. The

> aforesaid observations indicate that the learned Judge did not proceed on the basis tht cases involving relationship of lessor and lessee fall outside the purview of the Public Premises Act. On the other hand the said observations show that the learned Judge has held that the provisions of the Public Premises Act could not be invoked in the facts of that case."

9. A Division Bench of this Court in ***Ambitious Gold Nib Manufacturing (P) Limited (supra)*** after examining judgments in the cases of ***Express Newspapers*** and ***Ashoka Marketing Limited (supra)*** has held that proceedings before the Estate Officer are maintainable and cases like the present one would fall in the second part of the definition of the expression unauthorized occupation as defined in Section 2(g) of the Public Premises Act. The said decision being a judgment of a Coordinate Bench of two Judges is binding on us. We respectfully agree with the reasoning given and follow the said judgment to the extent it has been held that second part of Section 2(g) defining the expression unauthorized occupation for the purpose of Public Premises Act is applicable and recourse to civil proceedings for recovery of possession is not required. The said

judgment cannot be ignored merely because a particular argument was not raised or addressed. We may, however, clarify that the question of jurisdiction of the Estate Officer to decide whether there was any breach of the grant/lease, whether there was valid and justified determination was not raised before us during the course of arguments and is not being determined and decided. We have specifically mentioned this aspect in the judgment as we find that the appellant in the grounds of appeal has referred to the decision of the Supreme Court in ***Annamalai Club versus Government of Tamil Nadu, (1997) 3 SCC 169.***

10. Another contention raised by the appellant was that the building constructed on the land is not public premises under Section 2(c) of the Public Premises (Eviction for Unauthorised Occupants) Act, 1971 because building was never given on lease and has been constructed by the lessee. In this connection, learned counsel for the respondent No. 1 had drawn our attention to Clause 15 in the perpetual lease deed, which stipulates that the lessee on

determination of the lease shall peacefully yield up the said land and the buildings thereon to the lessor. In view of the said Clause, it cannot be said that the building constructed on the land cannot be regarded as the public premises.

11. In view of the above, we do not find any merit in the present appeal and the same is accordingly dismissed. No costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

SEPTEMBER 03, 2007.
VKR